IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4185 OF 2005

Franky Paul Francis ...Applicant
vs.
Mr.A.K.Singh,Intelligence Officer,
Narcotics Control Bureau,Mumbai & Anr. ...Respondents

Mr.S.H.Mishra for the Applicant
Mr.D.N.Salvi for Respondent No.1
Mr.R.Y.Mirza, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 22,2005

P.C.:

1. Heard Advocate for the Applicant. I have also heard learned Counsel for the Respondent No.1 and learned A.P.P. for Respondent No.2. This is an application for bail by the Applicant who is being prosecuted for offence under Section 29 read with Sections 8(c), 21(b) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. An application for bail made by the Applicant before the learned Special Judge has been rejected.

3. The learned Advocate for the Applicant has invited my attention to the report of the Forensic Science Laboratory of the State of Maharashtra. He has invited my attention to the said report which states that the percentage of Heroin in the sample in question is 1.53%. He submitted that the stringent conditions imposed by Section 37 of the said Act of 1985 will

not apply to the bail application filed by the Applicant as there is no allegation as regards commission of offence under section 19 or Section 24 or Section 27-A of the said Act of 1985 and the fact that the report of the Chemical Analyser shows that the offence does not involve commercial quantity. He, therefore, submitted that the learned Special Judge has committed an error by not granting bail especially when the investigation has been completed. The learned Counsel for the Respondent No.2 pointed out that the offence alleged against the Applicant involved commercial quantity and therefore section 37 will squarely apply.

4. I have considered the submissions. From the panchnama it appears that the quantity of Heroin seized is 3 kgs. which is more than the prescribed commercial quantity. In view of this position, section 37 will squarely apply and therefore the application for bail will have to be considered in the light of the section 37 of the said Act of 1985. Reliance placed by the Applicant on the percentage of Heroin found will not help the Applicant in this regard in as much as the said percentage has nothing to do with the commercial quantity and it has relation only with purity or potency of the substance found.

5. The allegation of the prosecution is that the absconding co-accused dispatched 3 kgs. of Heroin from Mandsaur, State of Madhya Pradesh to the Applicant. There was a conspiracy in

drug traffic in which the Applicant and the co-accused are involved. It is pertinent to note that on the basis of specific intelligence, the Officers of Narcotics Control Bureau serched the residential premises of the Applicant. At that time the packets containing Heroin were seized from the residential premises of the Applicant and the weight of the Heroin was found to be 3 kgs. There is sufficient evidence on record to show the involvement of the Applicant in the offence. It is, therefore, impossible to record a finding that there are reasonable grounds for believing that he is not guilty of the offence alleged against him. Hence, no case is made out for grant of bail. Application is rejected.

6. Liberty to apply before the learned Trial Judge for expediting the trial.

JUDGE